Filed 5/9/19 In re R.F. CA2/3

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

In re R.F. et al., Persons Coming Under the Juvenile Court Law.	B292084
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. FELIX S., JR., Defendant and Appellant.	Los Angeles County Super. Ct. No. 18CCJP03303A

APPEAL from orders of the Superior Court of Los Angeles County, Philip L. Soto, Judge. Affirmed.

Rich Pfeiffer, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, Kristine P. Miles, Assistant County Counsel, Sally Son, Deputy County Counsel, for Plaintiff and Respondent.

Felix S., Jr. (father) filed appeals from dependency court dispositional orders removing his then 12-year-old son R.F. and his 3-year-old son F.S. (by a different mother) from his care, and the order terminating jurisdiction over R.F. We affirm.

BACKGROUND

1. *The May 23, 2018 petition (R.F.)*

On May 23, 2018, the Los Angeles Department of Children and Family Services (DCFS) filed a petition alleging under Welfare and Institutions Code[1] section 300, subdivisions (a) and (b), that on May 19, 2018, father physically abused 12-year-old R.F., repeatedly striking R.F. in the face with his hand and striking R.F.'s back and arms with a belt. R.F. had bruises on his arms and back, a purple bruise and scratches on his left ear and head, and a purple patterned bruise on his face. On numerous prior occasions, father struck R.F.'s back and legs with a belt. The physical abuse was excessive and caused unreasonable pain and suffering. The petition also alleged under section 300, subdivision (b), that R.F. had been diagnosed with Attention Deficit Hyperactivity Disorder (ADHD), and father had failed to provide R.F. with his prescribed psychotropic medication, which constituted medical neglect and endangered R.F.'s health and safety.

A referral on May 21 reported that R.F. had two linear bruises on the left side of his face and purple and black bruising on his left ribcage. R.F. explained that father had disciplined him at home with a belt, because R.F. was " 'bad.' " R.F. was worried because the last time DCFS investigated, R.F. got in

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[1] All subsequent statutory references are to the Welfare and Institutions Code.

more trouble with father. DCFS met with R.F. in the principal's office at his elementary school, after the police interviewed R.F. R.F. told the social worker he was fine, and nothing happened. Asked about his bruises, R.F. explained that two days earlier father hit him on the face twice with an open hand, and three times on his back with a belt, for lying about taking loose change to buy a treat at the store. R.F. said the " 'whoopin' ' " was painful and he cried for three to five minutes, but now his injuries only hurt when R.F. touched them. After the beating, father explained to R.F. why he hit him. R.F. said father didn't mean to hurt him that bad, and he knew father was sorry because he bought things for R.F. and let him play video games the rest of the weekend. Father usually disciplined R.F. by taking away privileges, but would hit him with a belt if R.F. did not correct his behavior.

R.F. had lived with father for about six months, since November 2017. Before that R.F. had lived in Texas with mother (who was not named in the petition and is not a party to this appeal). Father had hit R.F. with the belt a few times. In December 2017, a month after R.F. came to live with father, DCFS had investigated allegations that father hit R.F. with a belt four or five times (for getting in trouble at school or taking food without permission). Father admitted he used the belt, and said he did not believe that R.F. had ADHD or needed medication. DCFS had closed the investigation as inconclusive.

R.F. said mother hit him with a belt two times when he was about eight years old, but he sustained no injuries, it did not hurt, and he did not cry. When he told mother that father hit him with a belt, mother told him to listen to father and follow his rules, and she talked to father. But father continued to use

the belt. During his medical examination, R.F. said father hit him with the belt about once a month.

R.F. was indifferent about being hit with a belt because he knew he deserved it; father had explained it was his punishment for being disobedient. R.F. was fearful of getting in trouble, but he was not fearful of father and felt safe in his care. " 'All kids get hit when they misbehave. It's normal. That's just what happens when kids behave badly. It['s] not that bad, really. I just bruise easily.' " When the social worker explained that not all children were hit with a belt and discipline leaving injuries was excessive, R.F. continued to insist he was fine and DCFS was " 'making a big deal out of nothing.' " When R.F. learned the police had left a phone message for his father, he began to cry, asked why the police and DCFS were making such a big deal, and repeated his injuries only hurt when he touched them. Father had warned him about the belt, and " 'I knew not to misbehave and I didn't listen, so I earned it.' "

R.F.'s classroom teacher said she had not seen injuries before, but R.F. acted scared and worried whenever she said that she would have to contact father about misbehavior, and would fixate on convincing her not to call. R.F. told her father moved him to his current school in January 2018 because father was upset about the December 2017 DCFS investigation and blamed R.F. for reporting. The afterschool program coordinator said she had addressed R.F.'s behavioral issues with father. She had seen no signs of abuse, but R.F. got very upset if she contacted father about misbehavior, so staff had dealt with any minor issues without involving father.

When father picked R.F. up at his afterschool program, he told the social worker he did not abuse R.F. but disciplined

him " 'out of care,' " after R.F. misbehaved at home, at school, and at afterschool, continuing to lie even after father warned him. After R.F. took the money for snacks, father hit him with the belt. " 'I am a single father, trying to raise my son to be a smart and respectful, young black man. He needs to understand he cannot be acting a fool out here because for a young black man, that has some serious consequences. But I don't expect you to understand that.' " Father had been raised in the south, and his parents had hit him with switches (tree branches) until he could not sit down. That was the way his parents were raised. Father understood *he* had been abused and beaten, but R.F. was not abused: " 'He is disciplined in a caring manner.' " Father believed he should be allowed to discipline R.F. as he saw fit. Lack of discipline at home led to young people being unruly and " 'shooting up schools.' "

Father did not believe R.F. had ADHD and thought he could fix R.F.'s problems without medication. Mother used medication only because she could not deal with R.F.'s behavior and used no discipline, sending him to live with father when R.F. became too much for her. Father would not give additional family history, saying he had disclosed everything during the last investigation. Father asked that R.F. be placed with his ex-girlfriend Y.M., the mother of father's son (and R.F.'s half-brother) F.S., but father doubted Y.M. would consent to the intrusion.

R.F. was placed in foster care. He did not want to talk to father over the phone. Father declined a monitored visit, hoping R.F. would learn from the experience. R.F. wanted to remain with father, although father would be mad and would change his school again. R.F. was surprised to learn mother was

worried about him, because when he told mother months ago that father beat him with the belt, mother responded that was just how father disciplined. R.F. had lived with mother his whole life, and he wanted at least a year with father.

DCFS interviewed Y.M., the mother of R.F.'s three-year-old half-brother F.S. Y.M. told the social worker F.S. had not seen father recently. Y.M. did not want F.S. involved with father's problems and said R.F. was a bad kid with severe behavioral issues. The social worker described R.F.'s injuries, and Y.M. said F.S. had no contact with father and was not at risk.

The social worker called mother in Texas, described R.F.'s injuries, and told her R.F. was in foster care. Mother was shocked that father was still using the belt after DCFS had advised against it in December 2017. Mother was nervous about having R.F. back because she had not been able to handle his behavior before she sent him to live with father.

DCFS recommended two to three monitored visits a week for father, with no limitations on mother's contact as the nonoffending parent.

At the detention hearing on May 24 father was present and mother was on the phone. The trial court found father was R.F.'s presumed father, appointed counsel, detained R.F. from father, and ordered monitored visitation.

2. *R.F.'s jurisdiction/disposition report and hearing*

A last minute information reported that father's stated goal was " 'to get my son back home with me and for my family to be happy.' " Father spoke to R.F. on the phone almost daily, but he did not want to visit because he did not understand why visits had to be supervised. Father was upset that mother had been given copies of reports and photographs of R.F.'s injuries when

he had not received anything, and complained that the process was not professional.

In the jurisdiction/disposition report, R.F. said he did well in school but had some behavioral issues. There was nothing mother and father could do to be better parents, and they rewarded his good behavior by buying him things. Father rarely hit him with a belt. The last time was because R.F. lied about using father's money to buy treats. R.F. said it upset him, it hurt, and he had marks and bruises on his face (from father's hand), arms, and back (from the belt). Still, R.F. did not think he had been abused. He believed it was fair for father to hit him because " 'he has parent's rights.' " He felt fine about going back to live with father, where he felt safe.

R.F. said the ADHD medication he took when he lived with mother helped him focus, but hurt his head and made him lose his appetite. He had seen a counselor, which he liked and would do again. When mother gave him the option to live with father, he accepted. The last time R.F. lived with father he was only six, and he could not remember when he last had an extended visit before he moved to live with father. R.F. wanted to stay with father but would go back to live with mother if he had to.

Mother said she knew father used a belt to discipline R.F., but was surprised father hit R.F. hard enough to leave marks. Father had told her he didn't like to use the belt, because he was abused as a child. During the December 2017 investigation R.F. had said it hurt to sit down, and father was very defensive. The latest beating happened after R.F. had lied about money, and he lied all the time. His behaviors had escalated when he lived with mother; he went to therapy, but irregularly, and the therapist told mother that it would take time for R.F. to open up.

R.F. stole from classmates, destroyed computer keyboards, drove her car into the garage, stole her debit card and lied about it, stole spray paint and painted on the neighbor's concrete, misbehaved on the school bus, and was suspended the last day of school. R.F. showed no remorse. " 'I'm not an advocate for beating kids but these things require discipline. We don't want to raise our son to be a statistic.' " Mother believed R.F. had ADHD but knew father did not agree. The medications R.F. took helped but had side effects.

Father said he usually disciplined R.F. by taking things away or making him clean house. He had used physical discipline only two or three times, and hit R.F. with a belt in May 2018 after R.F. repeatedly lied about petty things. Father had not noticed bruising, but bruises took time to show. He also hit R.F. in the mouth with an open hand for lying. Father felt he was being accused of abuse just for trying to discipline R.F. appropriately to turn around his negative behaviors. He thought he had the right to take R.F. off his ADHD medication without consulting with a doctor, he did not believe in giving children psychotropic medication, and R.F. told father he felt better unmedicated. R.F.'s issues had nothing to do with ADHD, and his misbehavior at school had not been serious.

Father distinguished abuse from discipline. While father had been hit with a three-foot piece of water hose up through his teenaged years, Father used a belt on R.F., with no intent to cause harm.

DCFS initially recommended R.F. be declared a dependent, that mother and father both be ordered to participate in family reunification services, and that R.F. participate in therapy, with monitored visitation for both parents.

Mother then wrote a letter to the court requesting custody of R.F., who she believed could thrive with individual and family counseling. She promised to have him reevaluated with a mental health screening and proper treatment, and she would engage in parenting classes, monitor all phone calls between R.F. and father, enroll R.F. in a new school, and inform the local Texas child protective services of the open dependency case so they could do "random and routine check-ins." DCFS recommended that given mother's "change of heart/mind," R.F. should be "released to the care of the mother given that she is nonoffending." DCFS recommended monitored visits for father and termination of jurisdiction, with a family law order giving mother full legal and physical custody.

Father was present at the jurisdiction/disposition hearing on June 18, 2018. Appointed counsel for mother waived her appearance and submitted on the DCFS recommendations. Father's counsel argued that the court should dismiss the petition. Father had conceded he used the belt, but he did not intend to inflict bruising, only to discipline R.F. Father's home environment was "firm," and he believed he was the best example for R.F. as a black man in society. R.F. was misdiagnosed with ADHD and father did not believe in medication. "[F]ather has very strong opinions regarding parenting this child and those opinions include physical discipline with a belt when the child is misbehaving." R.F.'s counsel submitted.

The court sustained the three counts in the petition and declared R.F. a dependent, ordering him placed in the home of mother as a nonoffending parent under section 361.2 and giving mother sole legal and physical custody. As R.F. would be moving to Texas, there was no need for services for father, who would

have monitored visitation and telephone calls. If father wanted unsupervised visitation, the trial court ordered a case plan including parenting, appropriate discipline, and anger management. His counsel objected to the termination of jurisdiction and the custody order: "Father would have requested release today and wanted that." The court noted that father abruptly walked out of the hearing.

R.F. flew to Texas accompanied by a social worker and was released to mother. The juvenile court signed and filed a custody order giving mother sole legal and physical custody of R.F., and giving father monitored visitation and/or phone calls. The order suggested father complete a parenting class and an anger management class before any modification of the order. The court terminated jurisdiction.

3. *The June 12, 2018 petition: F.S.*

On June 12, 2018, DCFS filed a petition alleging under section 300, subdivisions (a), (b), and (j), that father's abuse of R.F. put R.F.'s three-year-old half-brother F.S. at risk of harm.

Father and R.F. reported that F.S. visited father's home up to two or three times a week and sometimes stayed overnight. F.S.'s mother Y.M. (who was not named in the dependency petition and is not a party to this appeal) said F.S. never visited father overnight. Y.M. did not think F.S. was at risk. For the last six months, Y.M. had supervised father's visits because his visitation had been very inconsistent. Y.M. had never lived with father and they were not in a relationship. She first learned that father hit R.F. during the DCFS investigation in December 2017. Father had told Y.M. he'd given R.F. a " 'good whoopin',' " but Y.M. was not aware R.F. had sustained injuries. Father

always minimized it when he told Y.M. that R.F. got " 'whooped' " for his behavior.

Father stated he did not discipline F.S. the same way he did R.F., because F.S. was too young and did not have behavioral problems. F.S. showed no signs of abuse.

On June 5, 2018, father did not attend a scheduled team meeting to develop a plan to return R.F. to his care. On June 7, the superior court authorized F.S.'s removal from father's care.

At the detention hearing on June 13, 2018, the court found father was F.S.'s presumed father and noted that Y.M. was nonoffending. Father's counsel requested release of F.S. to both parents, stating father understood physical discipline that left marks on a child was inappropriate, he had never physically disciplined F.S., and he was willing to enroll in services and consent to unannounced visits. F.S.'s counsel submitted on release to Y.M. The court detained F.S. from father, ordered monitored visitation, and released F.S. to Y.M.

4. *F.S.'s jurisdiction/disposition report and hearing*

In the jurisdiction/disposition report filed July 9, 2018, Y.M. said that she was shocked to learn about R.F.'s injuries. She wanted full custody of three-year-old F.S. to protect him. She had never seen injuries on F.S., who loved father, but she feared "[w]hatever caused [father] to react that way towards [R.F.] could cause him to react that way towards my son."

Father said he did not understand why a case had been opened for F.S. and he had no statement to give. He agreed to meet with the social worker but did not show up, and she was unable to contact him.

A last minute information stated that father told F.S.'s godfather he would have one of father's sisters " 'come beat

[Y.M.'s] ass.' " Y.M. texted father and asked him to stop making threats. In response, father accused her of lying to DCFS, continuing: " '[K]arma is a bitch and I'll make sure she comes to visit you. That's not a threat it's a promise and you can go tell the courts that at least it'll be true . . . I'll happily sit in jail to make sure that happens & I mean that with every inch of my soul.' " Y.M. called the police, wanting a restraining order for herself only.

DCFS recommended that the juvenile court declare F.S. a dependent, and terminate jurisdiction with a custody order granting Y.M. full physical and legal custody of F.S. with monitored visitation for father.

At the July 16 adjudication hearing, the court took judicial notice of the sustained petition in R.F.'s case. The parties stipulated that if father were to testify, he would deny threatening Y.M., and father would state that before the petition he had visits with F.S. twice a month, with the last overnight visit in March. Father's counsel argued the petition should be dismissed, as no evidence showed that father physically disciplined F.S., and father's physical discipline of R.F. had no connection to F.S. Father also objected to closing the case. Counsel for DCFS and F.S. submitted.

The juvenile court sustained the petition and declared F.S. a dependent. The court removed F.S. from father and released F.S. to Y.M., with a custody order granting Y.M. full legal and physical custody, and visitation for father at least three hours a week, monitored by someone other than Y.M. The court terminated jurisdiction. Y.M.'s counsel advised the court she would seek a family law restraining order against father that same day.

Father filed timely notices of appeal from the dispositional orders. We consolidated the appeals for argument and decision.

DISCUSSION

1. *Father has forfeited his argument that substantial evidence did not support removal of R.F. from his care*

"Before a court may order a child physically removed from his or her parents, it must find, by clear and convincing evidence, the child would be at substantial risk of harm if returned home and there are no reasonable means by which the child can be protected without removal." (*In re Dakota J.* (2015) 242 Cal.App.4th 619, 631; § 361, subd. (c)(1).) Father states "it was not reasonable to find by clear and convincing evidence that [R.F.] was at a serious risk of harm if he remained in father's care under the supervision of the Department and the juvenile court," but develops no further argument and cites no legal authority in support. As he does not describe how the trial court was unreasonable, or provide case law to bolster his contention, he therefore forfeits his argument that substantial evidence does not support the trial court's order removing R.F. from his care. (*In re Daniel M.* (2003) 110 Cal.App.4th 703, 708.)

2. *The court correctly found R.F.'s mother was a nonoffending parent*

Father argues that mother was "not a nonoffending parent." He argues that mother was "abusive or neglectful," blaming her for the behavior for which he beat R.F. with the belt and inflicted bruising, because she failed to monitor R.F.'s medication or ensure he regularly attended therapy, hit R.F. with a belt four years earlier, and "shipped her son off to California." Father made none of these arguments in the trial court, instead

focusing entirely on arguing that R.F. would be safe if returned to father's care. "A party forfeits the right to claim error as grounds for reversal on appeal when he or she fails to raise the objection in the trial court." (*In re Dakota H.* (2005) 132 Cal.App.4th 212, 221.) The events bringing R.F. under dependency jurisdiction were not R.F.'s or mother's behaviors, but father's abusive punishment of R.F., and his failure to treat R.F.'s ADHD because he believed R.F. was misdiagnosed and medication was unnecessary. We reject his efforts to blame mother.

3. *Father did not present any evidence that placement with mother would be detrimental to R.F.*

Father argues the juvenile court was required to assess whether placement with mother would pose a detriment to R.F. Section 361.2, subdivision (a) provides:

> "When a court orders removal of a child pursuant to Section 361, the court shall first determine whether there is a parent of the child, with whom the child was not residing at the time that the events or conditions arose that brought the child within the provisions of Section 300, who desires to assume custody of the child. If that parent requests custody, the court shall place the child with the parent unless it finds that placement with that parent would be detrimental to the safety, protection, or physical or emotional well-being of the child."

"A nonoffending parent has a constitutionally protected interest in assuming physical custody of his or her dependent child which

may not be disturbed 'in the absence of clear and convincing evidence that the parent's choices will be "detrimental to the safety, protection, or physical or emotional well-being of the child." ' " (*In re C.M.* (2014) 232 Cal.App.4th 1394, 1400.) The statute *requires* placement with a noncustodial, nonoffending parent who requests custody, unless clear and convincing evidence shows that placement would be detrimental to the minor child. (*Id.* at p. 1401.) Further, "[t]he nonoffending parent does not have to prove lack of detriment. Rather, the party opposing placement with a nonoffending parent has the burden to show by clear and convincing evidence that the child will be harmed if the nonoffending parent is given custody." (*Id.* at p. 1402.)

Mother was a noncustodial, nonoffending parent who requested custody of R.F. She did not need to prove that R.F. would not suffer detriment if returned to her custody. Instead, father had the burden to prove by clear and convincing evidence that R.F. would suffer detriment if returned to mother. In the trial court, father presented no evidence of detriment and did not argue detriment. Even on appeal, he does not argue that the record contained clear and convincing evidence of detriment, instead repeating the argument (which we rejected above) that mother was somehow an offending parent. In these circumstances, the fact that the juvenile court did not expressly state that father had not shown by clear and convincing evidence that R.F. would suffer detriment if returned to mother's custody "is no grounds for reversing its otherwise proper ruling." (*In re A.J.* (2013) 214 Cal.App.4th 525, 538.)

We held in *In re Abram L.* (2013) 219 Cal.App.4th 452, 462, that a father did not forfeit the argument that the juvenile court

failed to make a detriment finding by not raising it below. In that case, however, the father was the nonoffending noncustodial parent with a constitutionally protected interest in assuming physical custody over the children; the court had denied him physical custody without making a finding of detriment; the father had argued at the disposition hearing that no detriment existed; and the court had failed to apply section 361.2 at all in considering the father's request for physical custody. (*In re Abram L.*, at pp. 458-462.) We reversed the judgment because the court's failure to make a detriment finding was a miscarriage of justice, as it was reasonably probable that a result more favorable to father would have been reached in the absence of the court's error. (*Id.* at p. 463.) Here, father was the offending parent; he presented no evidence to show, and never argued, that R.F. would suffer detriment in mother's custody; and the trial court properly applied section 361.2. In addition, it is not reasonably probable that the trial court would have reached a result more favorable to father if it had made an express finding regarding detriment, and we cannot reverse the judgment unless the court's error was prejudicial. (*In re D'Anthony D.* (2014) 230 Cal.App.4th 292, 303.) No miscarriage of justice occurred here.

4. *The trial court did not abuse its discretion when it terminated jurisdiction over R.F.*

We review the court's termination of jurisdiction under section 361.2 for an abuse of discretion. (*In re J.S.* (2011) 196 Cal.App.4th 1069, 1082.)

Father argues the trial court was required to evaluate mother's home and the services available in Texas before terminating jurisdiction, an argument he did not make in the trial court. As the party opposing termination, he bore

the burden of showing "by a preponderance of the evidence that conditions justifying initial assumption of dependency jurisdiction either still existed or were likely to exist if supervision were withdrawn." (*In re Aurora P.* (2015) 241 Cal.App.4th 1142, 1147.) He now argues "*[m]other* had not addressed any of her circumstances that contributed to the dependency case being initiated." (Italics added.) We easily reject this argument. The "conditions justifying initial assumption of dependency jurisdiction" were not mother's behavior, but father's beatings of R.F. and his failure to treat R.F.'s ADHD; mother was not named in the petition.

Father argues that further supervision was necessary. Again, he made no such argument in the trial court. We already have rejected his argument on appeal that mother was somehow an offending parent. Section 361.2, subdivision (b)(1) provides that if the court places the child with the noncustodial parent, it may "[o]rder that the parent become legal and physical custodian of the child. The court may also provide reasonable visitation by the noncustodial parent. The court *shall* then terminate its jurisdiction over the child." (Italics added.) The trial court did not abuse its discretion when it terminated jurisdiction after placing R.F. with mother and awarding her sole legal and physical custody.

5. *Substantial evidence supported the removal of three-year-old F.S. from father's custody*

Father does not challenge the juvenile court's jurisdictional finding that he presented a risk of harm to F.S. He argues that reasonable alternatives to removal from his custody could have ensured F.S.'s safety, as there was no connection between his

beatings of R.F. and any danger to the much younger F.S.[2] He points out that he had not abused or neglected F.S. in any way, and at the hearing he suggested that a safety plan and "unannounced visits to his home . . . . [w]hen the child is with him visiting" would be adequate to protect F.S.

Father does not challenge the jurisdictional findings, which are prima facie evidence that a child cannot safely remain in the home. (*In re A.F.* (2016) 3 Cal.App.5th 283, 292.) No actual harm to the child is required before removal is appropriate. (*Ibid.*) Removal from a parent's physical custody "requires a finding that there are no reasonable means of protecting the child without depriving the parent of custody." (*In re Henry V.* (2004) 119 Cal.App.4th 522, 525.) Father's suggestion that a reasonable method would be "unannounced visits" while F.S. visited father ignores that "[u]nannounced visits can only assess the situation . . . at the time of the visit," and physical abuse can only be detected after the fact. (*In re A.F.*, at p. 293.) Given father's lack of cooperation with DCFS, his refusal to disavow his use of a belt to beat R.F., and his statement that F.S. had escaped beating because he was young and did not yet misbehave, substantial evidence supported the conclusion that there were no reasonable means to protect F.S. without removal from father.

The mother in *In re D.B.* (2018) 26 Cal.App.5th 320, beat her six-year-old son with a belt, causing marks, broken skin,

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[2] The minute order states "there are reasonable services available to prevent removal" in the context of releasing F.S. to his mother Y.M., but the court clearly stated at the hearing that F.S. would be at substantial risk of harm if returned to father's custody. We resolve the conflict in favor of the reporter's transcript. (*In re Merrick V.* (2004) 122 Cal.App.4th 235, 249.)

and bleeding, after he ate doughnuts without permission. (*Id.* at pp. 323-324.) Both parents routinely disciplined him with a belt, and had been disciplined the same way as children. (*Id.* at p. 324.) They denied using physical discipline on their 18-month-old son, who had no marks or injuries. (*Ibid.*) The parents later said the discipline was excessive, immediately and actively participated in services, and the mother promised she would never use corporal punishment again. The juvenile court sustained jurisdiction over the 18-month-old under section 300, subdivision (j), by clear and convincing evidence, and removed him from the physical custody of both parents. (*In re D.B.*, at pp. 325-326.) The court of appeal concluded that substantial evidence supported the order removing the younger child. While an older child "may be able to protect herself against corporal punishment or call for help; an 18-month-old child cannot. Corporal punishment presents a far greater risk of injury—and serious injury—to a toddler than it does to an older teenager." (*Id.* at p. 332-333.) The trial court had also expressed concern about the parents' credibility in renouncing corporal punishment, although the parents had made some progress in gaining insight about their parenting practices. "The court could not dismiss the possibility the parents were saying only what they expected the court wanted to hear." (*Id.* at p. 333.)

Here, father beat 12-year-old R.F. with a belt for lying about using spare change to buy treats, caused multiple bruises, and routinely used a belt to discipline R.F., like father's parents had disciplined him. Father denied also beating three-year-old F.S., but only because F.S. was too young and did not yet misbehave. Father belatedly acknowledged that leaving marks was excessive, but never disavowed corporal punishment.

Given his age, three-year-old F.S. was at greater risk of injury than his 12-year-old half-brother R.F. As in *In re D.B.*, *supra*, 26 Cal.App.5th at pp. 332-333, substantial evidence supported the juvenile court's conclusion there were no reasonable means to protect F.S.'s physical health without removal from father's custody, and we affirm the order removing F.S. from father's custody.

DISPOSITION

The orders are affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

EGERTON, J.

We concur:

EDMON, P. J.

LAVIN, J.